IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3760 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURESHKUMAR L THAKER & 1 - Petitioner(s)
Versus
VISNAGAR NAGRIK SAHAKARI BANK & 3 - Respondent(s)

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Appearance :

MR SIRISH JOSHI FOR MR HASIT H JOSHI for Petitioner(s) : 1 - 2.
MR CHIRAG PATEL FOR MR BS PATEL for Respondent(s) : 1,
MR PINAKIN PATEL FOR MR MANISH R BHATT for Respondent(s) : 2,
RULE SERVED BY DS for Respondent(s) : 3,
MR LR PUJARI AGP for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/12/2006

ORAL JUDGMENT

1. Mr.Shirish Joshi, learned counsel for the petitioners under the authority of Mr.Hasit Joshi, Mr.Chirag Patel learned counsel for the respondent No.1 under the authority of Mr.B.S. Patel, Mr.Pinakin Patel, learned

counsel for the respondent No.2 under the authority of Mr.M.R. Bhatt, and Mr.L.R. Pujari, learned Assistant Government Pleader for the respondent No.4.

2. Present is a petition under Article 227 of the Constitution of India whereunder, the petitioners seek to challenge final order passed by the Lavad Court in Lavad Suit No.1415 of 1985 and order dtd.30/7/1991 passed by the Cooperative Tribunal in Appeal No.396 of 1990.

3. Short facts necessary for the disposal of the writ application are that the petitioner No.1 had obtained some loan from the respondent No.1 Bank and as he did not pay the said amount, the Bank had filed the above referred Lavad Suit. An application for attachment before judgment of the property was made, the present petitioner No.2 – Amrutbhai Somabhai Patel stood guarantor for the petitioner No.1, therefore, the order of attachment was withdrawn.

4. The petitioner No.2, thereafter was joined as party defendant No.4 and he raised an objection that he not being a member of the society, could not be joined, but, however, the objection was rejected.

5. During the course of recording of the evidence, the person who had affixed the signature to the plaint,

produced copy of the Resolution No.56 authorising him to sign the plaint, a question was put to him that whether he could produce the original or whether he was in possession of the original, to this, he submitted that he did not possess the original and was unable to produce the same. After recording full evidence, the learned Lavad Court decreed the suit holding that the suit was competent, the plaint was signed by a person authorised by the Bank and the defendant was answerable to pay the money. Being aggrieved by the said judgment, the present petitioners filed Appeal No.336 of 1990 before the Cooperative Tribunal. Their main submission before the Tribunal was that in absence of production of original Resolution and/or because of non-compliance of Rule 23 of the 1965 Rules, read with Sec.41 of Gujarat Cooperative Societies Act, 1961 the suit was not maintainable and deserved dismissal.

6. The learned Tribunal rejected all the objections and maintained the decree, therefore, the petitioners are before this Court.

7. Mr.Joshi, learned counsel for the petitioners has taken me through Sec.41 of the Act and Rule 43 of 1965 Rules and has, thereafter, submitted that unless there is a

certificate as a footnote on the copy of the resolution, Court/Tribunal Could not rely upon the said resolution. When the court asked him that does he have copy of the said resolution, learned counsel fairly conceded that he does not have copy of the same.

8. Sec.41 of the Act reads as under;;

“Sec.41.Admissibility of copy of entry as evidence.

(1)A copy of any entry in any book, register or list, regularly kept in the course of business and in the possession of a society shall, if duly certified in such manner as may be prescribed, be admissible in evidence of the existence of the entry, and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent to which, the original entry would, if produced, have been admissible to prove such matter.

(2)In the case of such societies, as the State Government may by general or special order direct, no officer of a society shall in any legal proceedings to which the society is not a party, be compelled to produce any of the society's book, the contents of which can be proved under sub-section (1) or to appear as a witness to prove the matters, transactions and accounts therein recorded,

except by order of the Court or a Judge made for special cause.”

9. Rule 23 of the Rules reads as under;-

“Rule 23.Manner of certifying of copy entry as evidence:- A copy of entry in any book, register or list, regularly kept in the course of business and in the possession of the society, for purposes specified in sub-section (1) of section 41 shall be certified;-

(a) by any officer of the society duly authorised in that behalf by the committee under the seal of the society;

(b) where an order has been passed under section 107 and a liquidator has been appointed under section 108, by the liquidator and shall bear the society's seal;

(c) where an administrator is appointed under section 81, by the administrator or where a committee consisting of one or more members is appointed under section 81, by

one member only where the committee consists of one member, or by two members where the committee consists of more than one member and shall bear the society's seal."

10.A juxtapose reading of Sec.41 of the Act and Rule 23 of the 1965 Rules would make it clear that a copy of any entry in any book, register or list, regularly kept in the course of business and in the possession of a society shall, if duly certified in such manner as may be prescribed, be permissible in evidence of the existence of the entry and shall be admitted as evidence of the matters etc. Rule 23 is nothing but amplification of sec.41, when it says that a copy of any entry in any book, register, or list, regularly kept in the course of business and in possession of the society, for purposes specified in sub-section (1) of sec.41 shall be certified by any officer of the society duly authorised in that behalf by the committee under the seal of the society. In the present matter, before the Lavad Court, no dispute was raised that the resolution No.56 was not passed or copy of the said resolution was not certified by the authorised officer. If such an objection was not raised at the

threshold, then such an objection cannot be allowed to be raised, that too, in absence of the certificate/ordinary copy of the said entry in these proceedings. Nothing else was argued before this Court. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief if any stands vacated. No costs.

11. At this stage, Mr.Joshi, learned counsel for the petitioners submits that he be allowed to make an application to the Bank for one time settlement.

12. If law permits the petitioners to make such an application, nothing stops them, however, it would always be within the discretion of the Bank to go for settlement.

(R.S. GARG, J.)

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